**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR**

**WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928**

**WP(C).No. 4215 of 2007(B)**

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**PETITIONER:**

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**DR.K. RADHAKRISHNAN NAIR,**
**RADHEYAM, HOUSE NO.43/2282,**
**S.R.M.ROAD, ERNAKULAM, KOCHI-18.**

**BY ADV. SRI.M.JACOB MURICKAN**

**RESPONDENTS:**

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1. **THE GOVERNMENT OF KERALA,**
   **REPRESENTED BY THE CHIEF SECRETARY TO**
   **GOVERNMENT, GOVERNMENT SECRETARIAT,**
   **THIRUVANANTHAPURAM.**

2. **THE DISTRICT COLLECTOR, ERNAKULAM.**

3. **THE REVENUE DIVISIONAL OFFICER,**
   **FORT KOCHI.**

4. **THE TAHSILDAR, KANAYANNUR.**

**BY GOVERNMENT PLEADER SRI.MOHAMMED RAFIQ**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

K.BALAKRISHNAN NAIR, J.

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W.P.(C) NO. 4215 OF 2007-B

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JUDGMENT

The petitioner has approached this Court, challenging Exts.P6 to P8 orders.

2. The brief facts of the case are the following: The petitioner purchased 7.176 cents of land in Sy.No.89/1 of Ernakulam Village, as per document No.2659/1993 of Ernakulam Sub Registry. He applied for and obtained permission to construct a three storeyed building in the said property. He constructed the ground floor and a portion of the first floor in 1994. The balance portion of the first floor having a floor area of 91.18 sq.metres was constructed in the year 2004. The Corporation has assessed property tax for the said building. By Ext.P3 settlement deed dated 24.11.2004, the petitioner assigned the right to construct the second floor of the building to his wife A.Krishnamma. She constructed the 2nd floor with her own funds in the year 2004. The said floor is having a floor area of 139.18 sq. metres. The Tahsildar, the 4th respondent herein assessed building tax for the said building, treating the entire building as a single unit. Ext.P6 is the assessment order dated 6.3.2006. The petitioner filed an appeal against the said order before the Revenue Divisional Officer. That

appeal was dismissed by Ext.P7proceedings. He filed a revision before the District Collector. That revision was dismissed by the District Collector, by Ext.P8 order dated 18.10.2006. This Writ Petition is filed, challenging Ext.P6, P7 and P8 orders.

3. According to the petitioner, his wife constructed the building after the right to construct the 2nd floor was transferred to her. She used her own funds. Therefore, the 2nd floor of the building should have been assessed separately. But, the said claim is inherently improbable, on the basis of the facts admitted by the petitioner. He transferred his right to construct the 2nd floor in favour of his wife, by Ext.P3 settlement deed only on 24.11.2004. The petitioner simultaneously submits,his wife constructed the 2nd floor of the building in 2004 itself. It is inherently improbable that she constructed the 2nd floor within a span of 36 days. So, it must be presumed that the transfer has been made after the construction is almost over. Therefore, I find nothing illegal with the assessment of building tax, treating the entire building as a single unit.

In the result, the Writ Petition fails and it is dismissed.

7th February, 2007. K.BALAKRISHNAN NAIR, JUDGE.

Nm/